



## Decision and Statement of reasons issued under the *Freedom of Information Act 1982*

Decision and reason for decision of Zak (Position Number 62329533), Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

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**Applicant:** Verity Pane

**Decision date:** 28 February 2022

**FOI reference number:** LEX 47814

**Sent by (email, post etc):** foi+request-8225-aeb3d90f@righttoknow.org.au

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Dear Verity,

### **Freedom of Information Request: LEX 47814**

#### **Decision**

1. The purpose of this letter is to give you a decision about your request for internal review for the matter LEX 47338 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
2. I have made the decision to affirm the original decision made by Derek (Position Number 62255248), Information Access Officer, Information Law Section. That decision was to grant full access to two (2) documents and part access to two (2) documents within the scope of your initial request.

#### **Authority to make decision**

3. I, Zak (Position Number 62329533), Information Access Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

## Summary

4. On 23 December 2021, you made a request for access to documents in the possession of the Department. Your request was made in the following terms:

*'I've heard DVA has a DVA Royal Commission Legal Team of about 25 people working in DVA's General Counsel Division.*

*There is interest in the community as to what the purpose of this DVA Royal Commission Legal Team is, what it does, what law firms have seconded their staff to it, and how much this is all costing the taxpayer.*

*I seek copy of the following documents (it is likely to be easier for DVA to do as a table rather than provide copy of the source documents as it will mean a lot less work for DVA in redaction/consideration):*

*\* the cost of all contractors employed within the DVA Royal Commission Legal Team, broken down by law firm/personnel agency seconded from (with number of contractors from that law firm/personnel agency) - cost may be at fortnightly, monthly, or yearly basis as suits DVA*

*\* the cost of all APS staff employed within the DVA Royal Commission Legal Team, broken down by classification - cost may be at fortnightly, monthly, or yearly basis as suits DVA*

*\* copy of any position/duty statement for the positions within the DVA Royal Commission Legal Team*

*\* any other document directly relevant to what the purpose of this DVA Royal Commission Legal Team is, what it does, what law firms have seconded their staff to it, and how much this is all costing the taxpayer, that DVA reasonably believes gives such context'*

5. On 24 January 2022, the Department made a decision to provide full access to two (2) documents and part access to two (2) documents within the scope of your request, under the following provisions of the FOI Act:

- a. Documents disclosing trade secrets or commercially valuable information (section 47);

b. Public interest conditional exemptions--certain operations of agencies (section 47E); and

c. Public interest conditional exemptions--personal privacy (section 47F).

6. After receiving the Department's decision on 24 January 2022, you contacted the Department on 29 January 2022 and requested that an internal review of the Department's decision be undertaken. Your request for an internal review outlined the following issues:

*'There are three issues with this decision - the first is with the contractor s 17 document, the second is with APS s 17 document, and the third is in documents in scope not included.*

*The redaction of contractor numbers makes no sense on the basis claimed unless only one contractor from that firm is involved. If more than one contractor from the same firm is involved, then the actual rate of an individual contractor cannot be revealed by providing head count, because each contractor will have their own different rates. The intention is how many contractors and from where - very basic information.*

*The APS s 17 document redacted position numbers - there is no legitimate basis to do so.*

*This FOI was for fairly basic information - what was the composition of this new task force working solely on management of the Royal Commission by DVA, what external companies were involved, and how much was this reputational management task force all costing the tax payer. I allowed for s 17 tables where that achieved this objective and reduced the amount of consideration needed, not to undermine that scope of the FOI.*

*So the third issue is that it is clear documents in scope should have been provided given the lack of coverage by the s 17 tables of the FOI scope - there must be a brief to the Secretary or equivalent on the creation or need for this new DVA Royal Commission Legal Team of about 25 people working in DVA's General Counsel Division that would cover all this so that document should have been provided as it was in scope and necessary given what your s 17 tables did not address. That is to be provided. A s 17 position tree listing for the new DVA Royal Commission Legal Team should have also been provided.'*

7. As no extension of time has been applied to process this Internal Review, a decision on your internal review application is due 28 February 2022.

### **Material taken into account**

8. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to refuse access to the documents follows.
9. I have taken the following material into account in making my decision.
- the terms of your request on the 23 December 2021 and the decision made on 24 January 2022;
  - the terms of your internal review request on the 29 January 2022;
  - the types of information and documents that are in the Department's possession;
  - the content of the document that fall within the scope of your request;
  - the availability of information relevant to your request, insofar as it determines the practicality and ease in which the Department can create a document under section 17 of the FOI Act;
  - Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
    - Section 22 Access to edited copies with exempt or irrelevant material deleted
    - Section 47 Documents disclosing trade secrets or commercially valuable information
    - Section 47E Public interest conditional exemptions--certain operations of agencies; and
  - the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).
10. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 1**.

## **Reasons for decision**

11. I have decided to affirm the original decision dated 24 January 2022 to provide full access to two (2) documents and part access to two (2) documents within the scope of your request, subject to the following provisions in accordance with the FOI Act:

### ***Documents disclosing trade secrets or commercially valuable information (section 47)***

12. Section 47 of the FOI Act provides that a document is an exempt document if its disclosure would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
13. I consider the total number of contractors engaged by the Department as outlined in Document 1 is information which has commercial value for the purposes of section 47 of the FOI Act. By releasing this information, I consider it will be possible to ascertain how much the Department pays its external legal service providers for a specified number of contracted legal staff. This is information which has commercial value to the Department. I also consider this is information which has commercial value to the Department's external legal services providers, because the disclosure of this information will reveal the fees the Department is prepared to pay for external legal support. This will diminish the Department's ability to obtain a more competitive price at a future time or from another external legal provider.
14. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

### ***Public interest conditional exemptions--certain operations of agencies (section 47E)***

15. Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:
  - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;

- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

16. I consider the position numbers of APS employees as outlined in Document 4 is conditionally exempt under this provision, because the number of APS officers assigned to the Royal Commission team is a small number. If position numbers are disclosed, I consider it will be possible to identify the specific employees who hold specific APS positions and determine what their salaries are. I consider the disclosure of this information could reasonably be expected to have a substantial adverse effect on the management or assessment of personnel as well as a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

*Application of the public interest test:*

17. Section 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

18. In order to assess whether release of the exempt material would be contrary to the public interest, I consider the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act, including:
  - (i) inform the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
  - (ii) enhance the scrutiny of government decision making.

19. I also consider the following factors which do not favour disclosure:

- (a) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management of an agency;
- (b) disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

20. Having regard to the factors for and against disclosure set out above, I consider the factors against disclosure outweigh the factors in favour of disclosure in this instance.

***Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)***

21. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.
22. I have considered the scope of your access application, which is set out in full in paragraph 4 above. That request sought access to any position/duty statement for positions within the DVA Royal Commission Legal Team, as well as documents which detailed the cost of staff and information about the purpose of the DVA Royal Commission Legal Team. I note that position descriptions for EL1 Senior Legal Officers and AP6 Legal Officers were provided to you, and that those documents outline the purpose and goals of the Royal Commission Legal Team.
23. Your internal review request refers to a brief to the Secretary or equivalent which details “the need to create” the Royal Commission Legal Team. I consider this information to be outside the scope of your access application. Should you seek access to information about to establishment of the Royal Commission Legal Team, I invite you to consider making a new access application under the FOI Act.

**Your rights of review**

24. If you are dissatisfied with my decision you may apply for Information Commissioner Review of the decision through the Office of the Australian Information Commissioner (**OAIC**).

## OAIC review

25. Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** Director of FOI Dispute Resolution  
Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Phone:** 1300 363 992  
**Email:** [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au)

26. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

## Contact us

27. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

**Online:** <https://www.dva.gov.au/about-us/overview/reporting/freedom-information/access-information>  
**Post:** Information Law, Legal Services and Audit Branch  
Department of Veterans' Affairs  
GPO Box 9998, Canberra ACT 2601  
**Facsimile:** (02) 6289 6337  
**Phone:** 1800 838 372  
**Email:** [Information.Law@dva.gov.au](mailto:Information.Law@dva.gov.au)

Yours sincerely,

### **Zak (Position Number 62329533)**

Information Access Officer  
Information Law Section  
Legal Services and Audit Branch

28 February 2022





## Schedule of relevant provisions in the FOI Act

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### 3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### 11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

### 11A Access to documents on request

#### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and
  - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.  
Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
  - (a) section 12 (documents otherwise available);
  - (b) section 13 (documents in national institutions);
  - (c) section 15A (personnel records);
  - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

*Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

*Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

**11B Public interest exemptions — factors**

*Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

*Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

*Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **15 Requests for access (as related to the requirements for requests)**

*Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

*Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
- (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

## **17 Requests involving use of computers etc**

- (1) Where:
- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

## **22 Access to edited copies with exempt or irrelevant matter deleted**

*Scope*

- (1) This section applies if:

- (a) an agency or Minister decides:
  - (i) to refuse to give access to an exempt document; or
  - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
  - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
  - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
  - (i) the nature and extent of the modification; and
  - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

*Access to edited copy*

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

*Notice to applicant*

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

**23 Decisions to be made by authorised persons**

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

**24 Power to refuse request--diversion of resources etc.**

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
  - (a) must undertake a request consultation process (see section 24AB); and
  - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists--the agency or Minister may refuse to give access to the document in accordance with the request.

- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
- (a) the requests relate to the same document or documents; or
  - (b) the requests relate to documents, the subject matter of which is substantially the same.

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

*Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
- (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

**24AB What is a request consultation process?**

*Scope*

- (1) This section sets out what is a request consultation process for the purposes of section 24.

*Requirement to notify*

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
  - (b) the practical refusal reason;
  - (c) the name of an officer of the agency or member of staff of the Minister (the contact person ) with whom the applicant may consult during a period;
  - (d) details of how the applicant may contact the contact person;
  - (e) that the period (the consultation period ) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

*Assistance to revise request*

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), reasonable steps includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
  - (b) providing the applicant with any information that would assist the applicant to revise the request.

*Extension of consultation period*

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

*Outcome of request consultation process*

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
  - (b) make a revised request;
  - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
  - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

*Consultation period to be disregarded in calculating processing period*

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

*No more than one request consultation process required*

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.

**26 Reasons and other particulars of decisions to be given**

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
  - (c) give to the applicant appropriate information concerning:
    - (i) his or her rights with respect to review of the decision;
    - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
    - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. (see section 11A).

**47 Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
- (a) trade secrets; or

- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

### **Public interest conditional exemptions**

#### **47E Public interest conditional exemptions—certain operations of agencies**

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).